

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Case No. 3:10-cr-00071-HDM

Plaintiff,

ORDER

v.

J C Lister,

Defendant.

The defendant, J C Lister, has filed a motion for reduction of sentence pursuant to 18 U.S.C. § 3582(c)(1)(A). (ECF No. 41).<sup>1</sup> The government has opposed (ECF No. 47). The defendant has not filed a reply, and the time for doing so has expired.

Lister is serving two concurrent sentences of 120 months' and 188 months' imprisonment on his conviction of one count of felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1) and § 924(a)(2), and one count of possession with intent to distribute at least 50 grams of actual methamphetamine in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(A)(viii). (ECF Nos. 15, 19, 20 & 26). His current projected release date is September 6, 2025.<sup>2</sup> He now seeks early release pursuant to § 3582(c)(1)(A).

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<sup>1</sup> The Federal Public Defender has filed a notice of non-supplementation pursuant to Second Amended General Order 2020-06. (ECF No. 46).

<sup>2</sup> See <https://www.bop.gov/inmateloc/> (last visited Feb. 26, 2025).

1 Section 3582(c)(1)(A) provides, in relevant part:

2 [T]he court, . . . upon motion of the defendant after  
3 the defendant has fully exhausted all administrative  
4 rights to appeal a failure of the Bureau of Prisons to  
5 bring a motion on the defendant's behalf or the lapse  
6 of 30 days from the receipt of such a request by the  
7 warden of the defendant's facility, whichever is  
8 earlier, may reduce the term of imprisonment (and may  
9 impose a term

10 of probation or supervised release with or without  
11 conditions that does not exceed the unserved portion  
12 of the original term of imprisonment), after  
13 considering the factors set forth in section 3553(a)  
14 to the extent that they are applicable, if it finds  
15 that--

16 (i) extraordinary and compelling reasons warrant such  
17 a reduction;

18 . . .

19 and that such a reduction is consistent with  
20 applicable policy statements issued by the Sentencing  
21 Commission.<sup>3</sup>

22 The applicable policy statement is set forth in U.S.S.G.  
23 § 1B1.13.<sup>4</sup> Section 1B1.13 provides, in relevant part, that a

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24 <sup>3</sup> In addition to "extraordinary and compelling reasons," the  
25 court may grant a motion if "the defendant is at least 70 years  
26 of age, has served at least 30 years in prison, pursuant to a  
27 sentence imposed under section 3559(c), for the offense or  
28 offenses for which the defendant is currently imprisoned, and a  
determination has been made by the Director of the Bureau of  
Prisons that the defendant is not a danger to the safety of any  
other person or the community, as provided under section  
3142(g)." 18 U.S.C. § 3582(c)(1)(A)(ii). Lister has not served  
more than thirty years in prison and is not at least 70 years  
old, so this provision does not apply.

<sup>4</sup> *United States v. Aruda*, 993 F.3d 797, 801-02 (9th Cir. 2021),  
which held that the version of § 1B1.13 then in effect was not  
an "applicable policy statement" binding on the courts, no  
longer controls following the November 2023 amendments to  
§ 1B1.13. See *United States v. Eklund*, 2024 WL 623903, at \*1 (D.  
Alaska Feb. 14, 2024); *United States v. Arcila*, 2024 WL 578688,  
at \*2 (D. Or. Feb. 12, 2024); *United States v. Ashcraft*, 2024 WL  
519966, at \*1 (E.D. Cal. Feb. 9, 2024).

1 § 3582(c)(1)(A) motion may be granted upon a finding that: (1)  
2 extraordinary and compelling reasons warrant a reduction; (2)  
3 the defendant is not a danger to the safety of any other person  
4 or to the community, as provided in 18 U.S.S. § 3142(g); and (3)  
5 the reduction is consistent with the policy statement.

6 A defendant is not entitled to be present for any hearing  
7 on a motion for compassionate release. See Fed. R. Crim. P.  
8 43(b)(4).

9 Preliminarily, Lister claims he exhausted his motion by  
10 filing a request with the warden of his institution. (ECF No. 41  
11 at 5). He provides no evidence of such filing. But because the  
12 government has not raised exhaustion in its response, any  
13 argument that the motion was not exhausted is considered waived.  
14 See *United States v. Keller*, 2 F.4th 1278, 1282 (9th Cir. 2021)  
15 (Section "3582(c)(1)(A)'s administrative exhaustion requirement  
16 is mandatory and must be enforced when properly raised by the  
17 government."); *United States v. Ortiz*, 2023 WL 1781565, at \*3  
18 (W.D. Wash. Feb. 6, 2023) ("[I]f the government does not raise  
19 the exhaustion requirement, it may be waived as a ground for  
20 opposing compassionate release.").

21 Lister asserts that extraordinary and compelling reasons  
22 exist based on the following: (1) "medical circumstances,"  
23 specifically monthly injections to treat opioid use disorder;  
24 (2) COVID-19; (3) the fact he has served nearly all of his  
25 sentence; (4) his conditions of confinement, including (i)  
26 threats to his safety due to his race and status as an  
27 informant, requiring him to spend many years in a special  
28 housing unit, (ii) the slamming of his hand in a food slot door

1 by a staff member, and (iii) the disappearance of his complaints  
2 and requests for medical records; and (5) his rehabilitation.  
3 The government argues that Lister has not satisfied the  
4 requirements for relief set forth in § 1B1.13, and that the  
5 § 3553(a) factors do not support a reduction in sentence.

6 The court agrees that none of the arguments raised by  
7 Lister qualifies as an extraordinary and compelling reason  
8 justifying a reduction in sentence.

9 Lister identifies "medical circumstances" as the basis for  
10 his motion. (ECF No. 41 at 1). The Guidelines set forth several  
11 examples in which the "medical circumstances of the defendant"  
12 may qualify as extraordinary and compelling reasons. U.S.S.G.  
13 § 1B1.13(b)(1). Those circumstances include where the defendant  
14 is suffering from a terminal illness, a serious physical or  
15 medical condition, a serious functional or cognitive impairment,  
16 age-related physical or mental health deterioration, or "from a  
17 medical condition that requires long-term or specialized medical  
18 care that is not being provided and without which the defendant  
19 is at risk of serious deterioration in health or death." *Id.*  
20 § 1B1.13(b)(1)(A)-(C). Monthly injections to combat opioid  
21 dependency do not fit any of these criteria.

22 The Guidelines also provide that extraordinary and  
23 compelling reasons may exist where:

24  
25 (i) the defendant is housed at a correctional facility  
26 affected or at imminent risk of being affected by (I)  
27 an ongoing outbreak of infectious disease, or (II) an  
28 ongoing public health emergency declared by the  
appropriate federal, state, or local authority; (ii)  
due to personal health risk factors and custodial  
status, the defendant is at increased risk of  
suffering severe medical complications or death as a

1 result of exposure to the ongoing outbreak of  
2 infectious disease or the ongoing public health  
emergency described in clause (i); and (iii) such risk  
cannot be adequately mitigated in a timely manner.

3 U.S.S.G. § 1B1.13(b)(1)(D). Beyond his conclusory assertion of  
4 "COVID-19" -- and even assuming without deciding that COVID-19  
5 could still be covered by this provision -- Lister does not  
6 explain how his institution is being affected, what measures it  
7 has taken or not taken, why any measures taken are not enough,  
8 or how he is at particularized increased risk of suffering  
9 severe medical complications or death from exposure to COVID-19.  
10 He has not therefore established extraordinary and compelling  
11 reasons.

12 None of Lister's other assertions is recognized as an  
13 extraordinary and compelling reason under § 1B1.13(b), nor is  
14 any, alone or combination, of similar gravity to the listed  
15 examples. Finally, rehabilitative efforts do not on their own,  
16 see U.S.S.G. § 1B1.13(d), or in combination with the other  
17 factors, support a finding of extraordinary and compelling  
18 reasons for a reduction in sentence.

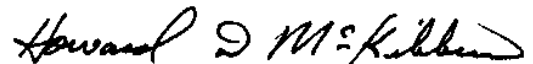
19 However, even if the above did amount to extraordinary and  
20 compelling reasons for a sentence reduction, the relevant  
21 § 3553(a) factors do not favor a reduction in sentence here. The  
22 facts underlying the offense included the sale of two dozen  
23 firearms, many of which were stolen or unregistered, as well as  
24 multiple drug transactions. Lister's history and characteristics  
25 also do not favor a reduced sentence. His criminal history  
26 category, a level VI, included other firearm and drug offenses,  
27 dangerous driving offenses, and - most troubling - physical  
28 abuse of his seven-year-old child. His conduct in prison

1 includes recent admissions to assaulting another inmate. (ECF  
2 No. 47-1 at 3). After considering all the relevant § 3553(a)  
3 factors, the court concludes that, given the high number of  
4 firearms and drug sales at issue in this case, Lister's criminal  
5 history, and Lister's conduct while incarcerated, the original  
6 sentence imposed remains necessary to reflect the seriousness of  
7 the offense, to promote respect for the law, to provide just  
8 punishment for the offense, to afford adequate deterrence to  
9 criminal conduct, to protect the public from further crimes of  
10 the defendant, and to avoid unwarranted sentence disparities  
11 among defendants with similar records who have been found guilty  
12 of similar conduct.

13 Accordingly, IT IS THEREFORE ORDERED that Lister's motion  
14 for reduction of sentence (ECF No. 41) is DENIED.

15 IT IS SO ORDERED.

16 DATED: This 11th day of March, 2025.

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19 UNITED STATES DISTRICT JUDGE  
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